No. 88-162

IN THE

Supreme Court of the United States

October Term, 1987

CLEVELAND BOARD OF EDUCATION,
Cross-Petitioner,

vs.

JAMES LOUDERMILL,
Cross-Respondent.

CROSS-PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
For the Sixth Circuit

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QUESTIONS PRESENTED

I. Is a party entitled to attorney's fees when he has succeeded on absolutely no issues in the litigation of the case?

II. Is a party entitled to attorney's fees on the "catalyst" theory when the sole defendant successfully defended each and every claim of wrong doing and made no changes in its past or present practices whatsoever?

III. Is a party entitled to attorney's fees on the "catalyst" theory for establishing the right to a pretermination hearing for governmental employees with protected property interests when such right had been established by previous Supreme Court decision?

IV. Is a party entitled to attorney's fees when the only success achieved was a procedural victory allowing him to file his Complaint in the United States District Court?

On June 23, 1988, Cross-Petitioner Cleveland Board of Education received the Petition for a Writ of Certioriari filed by Petitioner Loudermill.

REASONS FOR GRANTING REVIEW

I. The decision of the United States District Court for the Northern District of Ohio is contrary to all preceding case law on the award of attorney's fees.

II. Imposition of the attorney's fees on a defendant who through trial has proven to have given a plaintiff all constitutionally required rights and who has won on every issue of substance is unequitable, unjust and itself unconstitutional.

III. An award of attorney's fees is improper as Cross-Respondent has succeeded only in securing a procedural victory and has failed on each and every claim of merit in his Complaint.

III.

PARTIES

The Plaintiff-Appellee in the proceeding in the Court of Appeals was James Loudermill. The Defendant-Appellant in the Court of Appeals was the Cleveland Board of Education.

TABLE OF CONTENTS

Questions Presented I

Reasons for Granting Review II

Parties III

Table of Authorities IV

Opinions Below 2

Jurisdictional Statement 2

Statutory Provisions Involved 2

Statement of the Case 3

Statement of Facts 5

Argument 7

I. Cross-Respondent Has Succeeded on Absolutely No Issues in the Litigation of This Case 7

II. Cross-Respondent Did Not Cause Cross-Petitioner Cleveland Board of Education to Make Any Changes in Its Past or Present Practices Concerning Discharge 9

III. The Due Process Right to a Pretermination Hearing Was Established Well Before the United States Supreme Court Decided the Loudermill Case 12

IV. Cross-Respondent Has Succeeded on a Procedural Matter Only and Thus Should be Precluded From Being Awarded Attorney's Fees 13

Conclusion 16

Appendix:

United States District Court Memorandum of Opinion and Order (February 25, 1987)..... A1

TABLE OF AUTHORITIES

Cases

Arnett v. Kennedy, 416 U.S. 134 (1974) 10

Board of Regents v. Roth, 408 U.S. 564 (1972)..... 10,11

Cicerio v. Olgiati, 473 F. Supp. 653 (D.C.N.Y. 1979). 10

City of Riverside v. Rivera, 477 U.S. 561 (1986).... 10,14

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) 3,4,11,12,13,16

Davis v. Scherer, 468 U.S. 183 (1984)..... 13

Fast v. School District of the City of Ladue, 728 F.2d 1030 (8th Cir. 1984)..... 14

Goldberg v. Kelly, 397 U.S. 254 (1970)..... 10

Goss v. Lopez, 419 U.S. 565 (1975)..... 10

Hanrahan v. Hampton, 446 U.S. 754 (1980)..... 15

Harrington v. Vandalia-Butler Board of Education, 585 F.2d 192 (6th Cir. 1978) *cert. den.* 441 U.S. 932 (1978) 15

Kelley v. Metropolitan County Board of Education, 773 F.2d 677 (6th Cir. 1985)..... 14

Loudermill v. Cleveland Board of Education, 721 F.2d 550 (6th Cir. 1983) 3,9

Mathews v. Eldridge, 424 U.S. 319 (1976)..... 10

Miller v. Texas State Board of Barber Examiners, 615 F.2d 650 (5th Cir. 1980) *cert. denied* 449 U.S. 891 (1980)..... 15

Nadeau v. Helgemoe, 581 F.2d 275 (1st Cir. 1978) .. 7,14

Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1968) 14

Northcross v. Board of Education at Memphis City Schools, 611 F.2d 624 (6th Cir. 1980)..... 14

Parham v. Southwestern Bell Telephone Co., 433 F.2d 421 (8th Cir. 1970)..... 14

Price v. Pelka, 690 F.2d 98 (6th Cir. 1982)..... 14

Seals v. Quarterly County Court, 562 F.2d 390 (6th Cir. 1977)..... 14

Reed v. Arlington Hotel Co., 476 F.2d 721 (8th Cir. 1973) 14

Ridgeway v. Montana High School Association, 638 F. Supp. 326 (D.C. Mont. 1986) 9,10

Rivera v. City of Riverside, 679 F.2d 795 (9th Cir. 1982)..... 10

Statutes

28 U.S.C. §1254(1), §1343(3)(4)..... 2,3

42 U.S.C. §1983 14

42 U.S.C. §1988 2,4,5,7,17

Ohio Revised Code §124.34..... 8

Law Review Articles

Friendly, *Some Kind of Hearing*, 123 U. Pa. L. Rev. 1267, 1281 (1975) 10

Rule

Rule 54(b) of the Federal Rules of Civil Procedure .. 4

No._____

IN THE

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October Term, 1987

CLEVELAND BOARD OF EDUCATION,
Cross-Petitioner,

vs.

JAMES LOUDERMILL,
Cross-Respondent.

CROSS-PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals For the Sixth Circuit

The Cleveland Board of Education cross-petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered on April 6, 1988, in Case No. 86-4069, affirming a decision and order of the United States Court for the Northern District of Ohio which determined Cross-Respondent to be the prevailing party for purposes of attorney's fees.

OPINIONS BELOW

The decision of the United States District Court concerning attorney's fees dated February 25, 1987 is attached in the Appendix to the instant cross-petition. The decision of the United States Court of Appeals for the Sixth Circuit dated April 6, 1988 appears in the Appendix of Petitioner in Case No. 87-2099.

JURISDICTIONAL STATEMENT

This cross-petition seeks review of decisions of the United States District Court rendered February 25, 1987 and United States Court of Appeals for the Sixth Circuit rendered April 6, 1988. Jurisdiction is invoked pursuant to Title 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 42 U.S.C. §1988 in pertinent part provides:

> "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

STATEMENT OF THE CASE

This case was originally filed on October 27, 1981, in the United States District Court for the Northern District of Ohio. At the time of filing, Cross-Respondent also filed a Motion to Proceed *in forma pauperis* asserting he was unable to pay the fees for the filing of the case. Jurisdiction was invoked under 28 U.S.C. §1343(3) and (4).

On November 6, 1981, the District Court *sua sponte* dismissed the complaint for failure to state a claim on which relief could be granted and denied Cross-Respondent's motion for leave to proceed *in forma pauperis*. This was done prior to any service upon Defendant-Appellee Cleveland Board of Education. On November 17, 1983, the Sixth Circuit Court of Appeals affirmed the Court's dismissal of "that part of [the complaint] which alleged that delays in post-termination hearings violated [Loudermill's] due process rights" but vacated and remanded "that part of the District Court's judgment that dismissed the pretermination procedural due process claim." *Loudermill v. Cleveland Board of Education*, 721 F.2d 550, 564 (1983). The United States Supreme Court affirmed the Sixth Circuit's decision and remanded the case for further proceedings. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

On or about September 9, 1986 (prior to trial) Cross-Respondent James Loudermill filed a motion for attorney's fees. Cross-Petitioner Cleveland Board of Education filed its brief in opposition to James Loudermill's motion on November 13, 1986.

On October 17, 1986, the United States District Court issued its findings of fact and conclusions of law on the trial that was held. The Court found for the

Cross-Petitioner Cleveland Board of Education on all issues. Cross-Respondent filed his notice of appeal of the decision of the United States District Court on the merits of the trial on November 17, 1986.

On December 8, 1986, the United States District Court found that "... Loudermill is the prevailing party for purposes of 42 U.S.C. §1988," and determined that the amount of said fees would be the subject of a later hearing.

On April 3, 1987, the District Court determined that its order on attorney's fees was final and appealable pursuant to Rule 54(b) of the Federal Rules of Civil Procedure and that there was no just cause for delay of an appeal.

On May 1, 1987, Cross-Petitioner Cleveland Board of Education filed its notice of appeal on the issue of attorney's fees.

On April 6, 1988, the United States Court of Appeals for the Sixth Circuit affirmed the decisions of the United States District Court.

On June 24, 1988, Cross-Respondent filed a Petition for Certiorari on the decision of the United States Court of Appeals on the merits of his claim.

Cross-Petitioner presently seeks Certiorari on the issue of attorney's fees.

STATEMENT OF FACTS

Cross-Respondent originally filed his complaint on October 27, 1981, in the United States District Court for the Northern Division of Ohio. On November 6, 1981, that Court, prior to service on Cross-Petitioner Cleveland Board of Education, dismissed Cross-Respondent's complaint *sua sponte.*

On November 17, 1983, this Court affirmed the District Court's opinion in part (dealing with post-termination due process) and reversed in part (dealing with pretermination due process).

The United States Supreme Court affirmed the Sixth Circuit's decision on March 19, 1985, and stated in part:

> "Because Respondents [Loudermill and Donnelly] allege in their complaints that they had no chance to respond [to the charges made against them], the District Court erred in dismissing for failure to state a claim. The judgment of the Court of Appeals is affirmed, and the case is remanded for further proceedings consistent with this opinion."

Cleveland Board of Education v. Loudermill, 470 U.S. 532, 548 (1985).

On remand, Cross-Petitioner filed its answer, this case came on to be heard, and the United States District Court found in favor of Cross-Petitioner Cleveland Board of Education on all issues.

Having won only a procedural victory, *i.e.,* the right to file his complaint, Cross-Respondent filed for attorney's fees. After briefing and on December 8, 1986, the District Court found Cross-Respondent to be the prevailing party for the purpose of Title 42 U.S.C. §1988.

Thereafter, Cross-Petitioner appealed this decision to the United States Court of Appeals for the Sixth Circuit and on April 6, 1988 said Court affirmed the decision of the United States District Court.

Cross-Petitioner now seeks Certiorari on said decision.

ARGUMENT

In order for a plaintiff to receive an award of attorney's fees, he must either succeed on merits of his claims, cause the defendant to make significant changes in past practices, or be able to make a showing that plaintiff or plaintiffs' class achieved some significant benefit as a result of the litigation brought.

Under any of the above requirements, or any other logical or equitable standard this Court might wish to establish, Cross-Respondent in the instant case has no claim for attorney's fees. The United States District Court's determination that Cross-Respondent is the prevailing party for purposes of 42 U.S.C. §1988 is patently incorrect and must be reversed.

I. CROSS-RESPONDENT HAS SUCCEEDED ON ABSOLUTELY NO ISSUES IN THE LITIGATION OF THIS CASE.

Cross-Respondent asserts that he:

> "may be considered prevailing part[y] for attorney's fees purposes if [he] succeed]s] on any *significant* issue in litigation which achieves *some of the benefit the parties sought in bringing suit.*" (Emphasis added.)

Nadeau v. Helgemoe, 581 F.2d 275, 278-279 (1st Cir. 1978).

The relief Cross-Respondent sought in bringing suit, as taken from the prayer of his complaint, was specifically:

> "1. That he be reinstated to his position and awarded his back-pay and other benefits plus simple interest for the time that he was unlawfully deprived of his employment, and
>
> 2. Compensatory damages in the amount of one hundred thousand dollars ($100,000.00), and

3. A judgment declaring Ohio Revised Code Section 124.34 unconstitutional on its face and as applied, and

4. Preliminary and Permanent Injunctions prohibiting the removal or suspension of classified civil service employees without full compliance with the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution, and

5. Preliminary and Permanent Injunctions ordering reinstatement with full back pay and other benefits plus interest; and

6. Certification of this case as a class action; and

7. That the defendants be ordered to pay the plaintiff for his costs in prosecuting this case including a sum for his reasonable attorney's fees."

A simple review of the District Court's Opinion in this case indicates that Cross-Respondent *has not been able to achieve any* of the benefits which he sought in bringing suit. Cross-Respondent was not reinstated to his position or awarded backpay. Cross-Respondent was not awarded compensatory damages.

Ohio Revised Code Section 124.34 was not declared unconstitutional. There were no preliminary and/or permanent injunctions issued. The proposed class was never certified.

Cross-Respondent, in short, failed miserably. Cross-Respondent did not even seek the right to a pretermination hearing in his complaint. He asserted, generically, that his due process rights were violated. The District Court has now found *specifically* that Cross-Respondent's due process rights were *not* violated. The only success Cross-Respondent has achieved has been a

procedural victory establishing that his complaint did in fact state a cause of action upon which relief could be granted. Cross-Respondent failed, however, to prove that Cross-Petitioner Cleveland Board of Education violated any of his constitutional rights.

Cross-Respondent has, in conclusion, achieved nothing save for overcoming an initial procedural dismissal of his complaint. Attorney's fees should not be awarded under such circumstances.

II. CROSS-RESPONDENT DID NOT CAUSE CROSS-PETITIONER CLEVELAND BOARD OF EDUCATION TO MAKE ANY CHANGES IN ITS PAST OR PRESENT PRACTICES CONCERNING DISCHARGE.

Cross-Respondent asserts that "by establishing a clear, causal relationship between the litigation brought and the practical outcome realized . . ." *Ridgeway v. Montana High School Association*, 638 F. Supp. 326, 330 (D.C. Mont. 1986), he has been a catalyst to changing a practice concerning discharge procedures. The record is void as to any such changed practice.

The Cleveland Board of Education did not change any rule, regulation or practice in response to Cross-Respondent's action. The only evidence of any kind before this Court is a one page document, which appears to be an update, written by the City of Cleveland, which specifically required pretermination hearings in Civil Service cases. The previous practices of the Civil Service Commission are unknown and not a part of the record. Thus, there is no evidence that the *Loudermill* case was a catalyst to any significant change and NO EVIDENCE WHATSOEVER that this case changed any of the practices or procedures of the Cross-Petitioner Cleveland

Board of Education. Cross-Respondent has failed to meet the heavy burden to establish that his action was responsible for legislative reform. *See, Cicerio v. Olgiati,* 473 F. Supp. 653 (D.C.N.Y. 1979).

Assuming, *arguendo,* that the catalyst test is applicable, which Cross-Petitioner Cleveland Board of Education specifically and adamantly denies, Cross-Respondent still must fail on his claim. In reaching the test in *Ridgeway, supra,* the Ninth Circuit relied on *Rivera v. City of Riverside,* 679 F.2d 795 (9th Cir. 1982), a case where plaintiffs recovered attorney's fees because those plaintiffs had "succeeded on the most significant issue of the litigation. They proved that their civil rights had been violated." *See, Ridgeway, supra,* at 330.

In the present case, Cross-Respondent has not succeeded in establishing a clear, causal relationship between the litigation and any practical outcome.

In fact, Cross-Respondent has *failed* to prove that either his civil rights or his constitutional rights were abridged by Cross-Petitioner Cleveland Board of Education or any other defendant. The right to a pretermination hearing was well established law in regard to public employees prior to Loudermill's suit. *See, Board of Regents v. Roth,* 408 U.S. 564, at 569-570, 571 (1972); *Arnett v. Kennedy,* 416 U.S. 134, 170-171 (1974); *Mathews v. Eldridge,* 424 U.S. 319, 343 (1976); *Goldberg v. Kelly,* 397 U.S. 254, 264 (1970); *Goss v. Lopez,* 419 U.S. 565, 583-584 (1975); *see, also,* Friendly, *Some Kind of Hearing,* 123 U. Pa. L. Rev. 1267, 1281 (1975).

Similar to the present case, the *Roth* case involved a public school employee. The primary issue in *Roth* was whether the employee had a right to a pretermination hearing. The Court stated:

> "When protected interests are implicated, the right to some kind of prior hearing is permanent."

Roth, supra, at 571.

Since *Roth,* decided in 1971, determined that public employees had a right to a pretermination hearing, Cross-Respondent cannot now be heard to claim that his 1985 case established this right. Such an argument is totally without merit.

Cross-Respondent's action did not establish any new law. Cross-Respondent's action did not change any law or declare any statute unconstitutional in respect to Cross-Petitioner or otherwise. Cross-Respondent's action did not change any practice of Cross-Petitioner. Cross-Respondent's action was never even certified as a class and, therefore, no class could have benefited by his alleged procedural victory.

The causal relationship, if any exists, is more clearly between prior United States Supreme Court precedent and a right to a pretermination hearing, not between *Loudermill* and this right. *Loudermill* was a multi-issue case in which the United States Supreme Court clearly did not establish a right to a pretermination hearing for public employees, but merely affirmed the right to this specific Cross-Respondent by citing and following well-established precedent.

Therefore, Cross-Respondent should not be awarded attorney's fees.

III. THE DUE PROCESS RIGHT TO A PRETERMINATION HEARING WAS ESTABLISHED WELL BEFORE THE UNITED STATES SUPREME COURT DECIDED THE LOUDERMILL CASE.

The Supreme Court makes the best argument that a right to a pretermination hearing was not new law but was a well-established principle before *Loudermill.* In the *Loudermill* case the United States Supreme Court stated:

> "An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 313 (1950). We have described "the root requirement" of the Due Process Clause as being "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." *Boddie v. Connecticut,* 401 U.S. 371, 379 (1971) (emphasis in original); *see, Bell v. Burson,* 402 U.S. 535, 542 (1971). This principle requires "some kind of a hearing" prior to the discharge of an employee who has a constitutionally protected property interest in his employment. *Board of Regents v. Roth,* 408 U.S., at 569-570; *Perry v. Sinderman,* 408 U.S. 593, 599 (1972). *As we pointed out last Term, this rule has been settled for some time now. Davis v. Scherer,* 468 U.S. _____, _____, n. 10 (1984); id., at _____ (Brennan, J., concurring in part and dissenting in part). Even decisions finding no constitutional violation in termination procedures have relied on the existence of some pretermination opportunity to respond. For example, in *Arnett* six Justices found constitutional minima satisfied where the employee had access to the material upon which the charge was based and could respond orally and in writing and present rebuttal affidavits. *See also, Barry v. Barchi,* 443 U.S. 55, 65 (1979), (no due

process violation where horse trainer whose license was suspended "was given more than one opportunity to present his side of the story"). (Emphasis added.)

Cleveland Board of Education v. Loudermill, 470 U.S. 532, 542 (1985).

"This rule [requiring some kind of hearing prior to the discharge of an employee] has been settled for some time now." *Davis v. Scherer, supra.* Cross-Respondent's argument contradicts the specific language of the Supreme Court.

Cross-Respondent has established no new precedent nor has he or any class reaped any benefit because of his case. The Supreme Court language is clear. The due process requirement of a right to a pretermination hearing was well settled law prior to Loudermill, and no precedent supports an award of attorney's fees for a mere affirmation or even a mere clarification of existing law. As a result, Cross-Respondent's plea for attorney's fees must fail.

IV. CROSS-RESPONDENT HAS SUCCEEDED ON A PROCEDURAL MATTER ONLY AND THUS SHOULD BE PRECLUDED FROM BEING AWARDED ATTORNEY'S FEES.

Cross-Respondent claims that he is entitled to attorney's fees "irrespective of whether or not he personally obtains any individual relief". However, to support this argument, Cross-Respondent cites cases which invariably have awarded personal injunctive or monetary relief to either the plaintiff or the formally certified plaintiff's class.

In *Price v. Pelka*, 690 F.2d 98 (6th Cir. 1982), plaintiffs received injunctive relief which allowed them fair, nondiscriminatory housing. In *Northcross v. Board of Education at Memphis City Schools*, 611 F.2d 624 (6th Cir. 1980), plaintiff received injunctive relief in their school desegregation case.

In *Seals v. Quarterly County Court*, 562 F.2d 390 (6th Cir. 1977), plaintiffs received injunctive relief which changed a voting plan. In *Nadeau v. Helgemoe*, 581 F.2d 275 (1st Cir. 1978), plaintiff prevailed on the merits; plaintiff prisoners won access to libraries.

In *Fast v. School District of the City of Ladue*, 728 F.2d 1030 (8th Cir. 1984), plaintiff was awarded nominal damages, and the Court found that the defendant clearly failed to provide reasons for its dismissal of the plaintiff. In *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 40 (1968); *Parham v. Southwestern Bell Telephone Co.*, 433 F.2d 421 (8th Cir. 1970); and *Reed v. Arlington Hotel Co.*, 476 F.2d 721 (8th Cir. 1973), a properly certified class was awarded relief. In *Kelly v. Metropolitan County Board of Education*, 773 F.2d 677 (6th Cir. 1985), the plaintiff's class clearly benefitted because the Court ordered desegregation.

Cross-Respondent has argued that the case of *City of Riverside v. Rivera*, *supra*, supports his request for attorney's fees. In *Rivera*, plaintiffs were awarded $33,350 in compensatory and punitive damages due to 11 violations of 42 U.S.C. §1983, 4 instances of false arrest and imprisonment, and 22 instances of negligence.

In the present case, Cross-Respondent's attorneys have gained nothing for their clients, yet they still demand attorney's fees. The case *sub judice* was never even certified as a class action. Such a proposition can not stand logical scrutiny.

More directly on point is the case of *Hanrahan v. Hampton*, 446 U.S. 754 (1980), wherein the Supreme Court held that attorney's fees were not awardable because the plaintiff therein had merely successfully appealed a directed verdict. All Cross-Respondent has accomplished in the instant case is to successfully appeal the District Court's *sua sponte* dismissal of his complaint. The Sixth Circuit has taken a similar position in deciding that a party cannot prevail if neither back-pay, reinstatement, nor injunctive relief was awardable and, therefore, no attorney's fees could be awarded despite the establishment of a Title VII violation. *Harrington v. Vandalia-Butler Board of Education*, 585 F.2d 192 (6th Cir. 1978) *cert. den.* 441 U.S. 932, 99 S. Ct. 2053 (1978).

Defendant Cleveland Board of Education respectfully submits that the term "prevailing party" cannot "be stretched to include this situation." *Miller v. Texas State Board of Barber Examiners*, 615 F.2d 650 (5th Cir. 1980) *cert. den.* 449 U.S. 891 (1980). Cross-Respondent is simply not entitled to attorney's fees.

CONCLUSION

Cross-Respondent is not a prevailing party, by the United States Supreme Court's, by the Sixth Circuit's, or by any other recent Federal Court's definition. Cross-Respondent did not cause Cross-Petitioner Cleveland Board of Education to make any change in its past practices.

The Supreme Court has held that the due process requirement of a pretermination hearing was well-settled law prior to *Cleveland Board of Education v. Loudermill,* 477 U.S. 532, 547-548 (1985). Therefore, Cross-Respondent did not establish new law.

Finally, this United States District Court has held that Cross-Petitioner provided Cross-Respondent with a pretermination hearing, and that Cross-Respondent consequently achieved no benefit for himself in bringing suit.

Cross-Respondent's argument that he is entitled to attorney's fees even though no existing law was changed and even though Cross-Petitioner complied fully with existing law is infelicitous. For this Court to adopt Cross-Respondent's contention would be tantamount to establishing an unfair, unprecedented and inappropriate standard of law. Cross-Petitioner Cleveland Board of Education respectfully submits that neither precedent nor logic permits such a conclusion.

Cross-Petitioner requests that the United States District Court's determination that Cross-Respondent is a prevailing party under Title 42 U.S.C. §1988 be reversed.

Respectfully submitted,

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APPENDIX

MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT

(Filed February 25, 1987)

Case No. C81-2132

Judge John M. Manos

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES LOUDERMILL,
Plaintiff,

v.

CLEVELAND BOARD OF EDUCATION,
Defendant.

MEMORANDUM OF OPINION

On October 21, 1981, James Loudermill, plaintiff, filed the above-captioned case alleging that the Cleveland Board of Education, the City of Cleveland, and the Cleveland Civil Service Commission ("Commission"), defendants, had violated his civil rights under 42 U.S.C. §1983 by failing to provide him with a hearing prior to the termination of his employment and by denying him a prompt posttermination hearing. On November 6, 1981, this court dismissed the complaint for failure to state a claim on which relief could be granted. On November 17, 1983, the Sixth Circuit Court of Appeals held that the

delay in providing the posttermination hearing did not constitute a violation of Loudermill's right to due process but that a civil service employer must provide its classified civil service employees with "some opportunity to present evidence on their own behalf prior to discharge." *Loudermill v. Cleveland Board of Education*, 721 F.2d 550, 552 (6th Cir. 1983).

On March 19, 1985, the United States Supreme Court affirmed the decision of the court of appeals. *Cleveland Board of Education v. Loudermill*, 105 S.Ct. 1487 (1985). The Supreme Court held that "[t]he tenured public employee is entitled to oral or written notice of the employer's evidence, and an opportunity to present his side of the story." *Id.* at 1495. It remanded the case for further proceedings. *Id.* at 1496.

In November of 1985, the Cleveland Civil Service Commission amended Civil Service Rule 9.20 to provide that a classified civil service employee must receive a pretermination hearing. On September 11 and 12, 1986, this court tried the issue of whether Loudermill had received a pretermination hearing and found that he had. The case is currently before the court to determine if Loudermill is a "prevailing party" under 42 U.S.C. §1988.[1] For the following reasons, the court holds that Loudermill is a prevailing party.

A plaintiff may be considered a prevailing party if he succeeds "on any significant issue in litigation which achieves some of the benefit [he] sought in bringing suit."

---

[1] 42 U.S.C. §1988 provides in pertinent part:

> In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S.Ct. 1933, 1939 (1983) (quoting *Nadeau v. Helgemoe*, 581 F.2d 275, 278-79 (1st Cir. 1978)). Even if the plaintiff does not obtain direct relief, he may qualify as a prevailing party if the lawsuit served as the catalyst which caused the defendant "to make significant changes in its past practices. . . ." *Othen v. Ann Arbor School Board*, 699 F.2d 309, 313 (6th Cir. 1983); *see also Dover v. Rose*, 709 F.2d 436, 439 (6th Cir. 1983); *Nadeau*, 581 F.2d at 279.

In the instant case, Loudermill did not establish that he was denied a pretermination hearing and entitled to direct relief. However, because of his lawsuit, the United States Supreme Court held that a pretermination hearing must be provided to an employee who has a property interest in his employment. *Loudermill*, 105 S.Ct. at 1493. *Subsequently, the Commission amended its rules to provide for a pretermination hearing.* The court concludes that Loudermill's lawsuit served as a catalyst for this amendment. Further, the amendment resulted in a significant change because, before the amendment, a civil service employee was limited to posttermination review of his discharge. Accordingly, the court holds that Loudermill is a prevailing party for purposes of 42 U.S.C. §1988.[2]

IT IS SO ORDERED.

/s/ JOHN M. MANOS
United States District Judge

[2] The amount of the attorney's fee will be determined by this court on a later date.

Case No. C81-2132

Judge John M. Manos

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES LOUDERMILL,
Plaintiff,

v.

CLEVELAND BOARD OF EDUCATION,
Defendant.

ORDER

Pursuant to the Memorandum of Opinion issued in the above-captioned case this date, the court holds that Loudermill is a prevailing party for purposes of 42 U.S.C. §1988.

IT IS SO ORDERED.

/s/ JOHN M. MANOS
United States District Judge